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9 *Attorney for Plaintiff, Adlife Marketing &*
10 *Communications Co., Inc.*

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ADLIFE MARKETING &
COMMUNICATIONS COMPANY, INC.,
a Rhode Island corporation,
Plaintiff,

v.

PETERSON MARKET, LLC. d/b/a
PETERSON'S FRESH MARKET, a Utah
limited liability company; and DOES 1-15,
inclusive,

Defendant(s).

Case No.: _____

COMPLAINT FOR:
COPYRIGHT INFRINGEMENT
(17 U.S.C. § 501);
DEMAND FOR JURY TRIAL

EQUITABLE RELIEF IS SOUGHT

1 Plaintiff, Adlife Marketing & Communications Company, Inc. (“Adlife”), complains
2 against Defendants, Peterson Market, LLC. d/b/a Peterson’s Fresh Market (“Peterson”) and
3 DOES 1-100 (collectively, “Defendants”) as follows:

4

5 **JURISDICTION AND VENUE**

6 1. This is a civil action seeking damages and injunctive relief against Peterson
7 for copyright infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

8 2. This Court has subject matter jurisdiction under the United States Copyright
9 Act, 17 U.S.C. §§ 101 *et seq.*; 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§
10 1338(a) (copyright).

11 3. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 28
12 U.S.C. § 1400(a) in that the claim arises in this Judicial District, Defendant Peterson may
13 be found and transacts business in this Judicial District. Alternatively, venue is also proper
14 pursuant to 28 U.S.C. § 1400(b) because Defendants have minimum contacts, committed
15 the acts of infringement, and have regular and established places of business in this judicial
16 district.

17 **THE PARTIES**

18 4. Adlife is a Rhode Island corporation with its principal place of business in
19 Pawtucket, Rhode Island.

20 5. Adlife is a “copyright owner” that holds “exclusive rights” to its “copyrighted
21 work[s]” pursuant to 17 U.S.C. §§ 101, 106, 106(A).

22 6. On information and belief, Peterson is a limited liability corporation existing
23 under the laws of Utah, doing business as Peterson’s Fresh Market.

24 7. Adlife is informed and believes, and thereon alleges, that Peterson is a limited
25 liability company that unlawfully reproduced and published Adlife’s copyrighted works
26 without Adlife’s express or implied authority, by the method of a license.

27 8. The true names or capacities, whether individual, corporate or otherwise, of
28 the Defendants named herein as DOES 1 through 15, inclusive, are unknown to Adlife,

1 who therefore sues said Defendants by such fictitious names. Adlife will ask leave of
2 Court to amend this Complaint and insert the true names and capacities of said Defendants
3 when the same have been ascertained.

4

5 **STATEMENT OF FACTS**

6 *Adlife and the Photographs Forming the Subject Matter of This Complaint*

7 9. Adlife is an advertising and marketing agency whose team of seasoned
8 professionals has, for decades, provided elite branding services to its clientele. With its
9 innovative marketing campaigns and its production of high quality printed pieces such as
10 retail circulars, signage, pamphlets and more, Adlife enables its client to build a brand
11 through compelling visual arrangements.

12 10. Since 1978, Adlife has created, artistically arranged and professionally
13 produced a library of still images of food and other grocery items. Adlife's library now
14 consists of approximately 30,000 photos. The photographs are high-resolution, artistically
15 rendered with pleasing angles and selective lighting, color-corrected and color-separated,
16 which makes them particularly valuable as, when used together, they provide color
17 consistency.

18 11. For valuable consideration, Adlife has licensed the rights to reproduce,
19 distribute and publicly display its copyrighted photographs, or derivative versions thereof,
20 to other advertising agencies and retailers.

21 12. Adlife is the holder of all rights, title and interests in and to said food
22 photographs which form the subject matter of this dispute (the "Copyrighted Food
23 Photographs").

24 13. The Copyrighted Food Photographs at issue in this Complaint were timely
25 registered with the United States Copyright Office.

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Peterson Market, LLC. d/b/a Peterson's Fresh Market

14. Peterson is a limited liability company incorporated in the City of Salt Lake City, in the State of Utah, and has a principal place of business in the City of Salt Lake City, in the State of Utah.

15. Peterson Market, LLC. is a retail grocery store regularly doing business under the assumed name of “Peterson’s Fresh Market.” As with any actively advertising grocery chain, Peterson organizes, provides, distributes, and regularly updates weekly circular ads featuring photography of food and retail items offered for sale during that calendar week. Peterson displays and provides access to their circular ads through its business website at <http://www.petersonsfreshmarket.com/>. Peterson regularly used, and continues to use, Adlife’s Copyrighted Food Photographs in its weekly circular ads.

16. Adlife is informed and believes that fifty-seven (57) of its Copyrighted Food Photographs have been used by Defendants without Adlife's permission, but believes that further instances of infringement of Adlife's Copyrighted Food Photographs may be found.

17. Adlife has ownership and copyright of the Copyrighted Food Photographs. See Copyrighted Food Photographs, attached hereto as "Exhibit A."

18. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002012581; BeefFlatIronSteakGrlMrk001, BeefHotDog005.

19. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002019412; BreadFrenchBaguette002, FajitaChicken003.

20. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002019921; BreadRyeSliced001.

21. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA000020887; SalmonFilletHR0610, ShrimpRawHR0412.

1 22. Adlife has registered the following Copyrighted Food Photographs with the
2 United States Copyright Office under Registration Number VA0002020970;
3 BarLemon001, CookieCoconutMacaroon002.

4 23. Adlife has registered the following Copyrighted Food Photographs with the
5 United States Copyright Office under Registration Number VA0002021644;
6 CantaloupeHR0307, PorkChopsBonelessSirloin0306, RollCinnamon002.

7 24. Adlife has registered the following Copyrighted Food Photographs with the
8 United States Copyright Office under Registration Number VA0002022966;
9 BasketOfChickenHR0308, KingCrabLegsHR0310, PortabellaMushroomsHR0310,
10 RoastedWholeChickenHR0308, RollsHoagieHR0312.

11 25. Adlife has registered the following Copyrighted Food Photographs with the
12 United States Copyright Office under Registration Number VA0002023644;
13 BeefSirloinSteakHR0410, Squash0311.

14 26. Adlife has registered the following Copyrighted Food Photographs with the
15 United States Copyright Office under Registration Number VA0002024450;
16 PorkShoulderRoastHR0412.

17 27. Adlife has registered the following Copyrighted Food Photographs with the
18 United States Copyright Office under Registration Number VA0002025247;
19 SalamiSliced001_ADL.

20 28. Adlife has registered the following Copyrighted Food Photographs with the
21 United States Copyright Office under Registration Number VA0002025647;
22 PorkButtSteakGrlMrk001_ADL.

23 29. Adlife has registered the following Copyrighted Food Photographs with the
24 United States Copyright Office under Registration Number VA0002025939;
25 SweetYellowOnions001_ADL.

26 30. Adlife has registered the following Copyrighted Food Photographs with the
27 United States Copyright Office under Registration Number VA0002027172;
28 PorkSausagePatty003_ADL.

1 31. Adlife has registered the following Copyrighted Food Photographs with the
2 United States Copyright Office under Registration Number VA0002033004;
3 BowTiePastaSalad001_ADL.

4 32. Adlife has registered the following Copyrighted Food Photographs with the
5 United States Copyright Office under Registration Number VA0002035055;
6 MushroomBabyBella002_ADL.

7 33. Adlife has registered the following Copyrighted Food Photographs with the
8 United States Copyright Office under Registration Number VA0002044966;
9 BlackberriesBowl001_ADL, Blueberries001_ADL.

10 34. Adlife has registered the following Copyrighted Food Photographs with the
11 United States Copyright Office under Registration Number VA0002044969;
12 ChickenTendersBroccoli001_ADL, RumpRoastCooked002_ADL,
13 ShortRibsCooked001_ADL, SirloinSteak001_ADL, SteakTopSirloinCooked001_ADL.

14 35. Adlife has registered the following Copyrighted Food Photographs with the
15 United States Copyright Office under Registration Number VA0002045003;
16 BabyBackRibs001_ADL, TilapiaCooked001_ADL.

17 36. Adlife has registered the following Copyrighted Food Photographs with the
18 United States Copyright Office under Registration Number VA0002045012;
19 CubeSteakRice001_ADL, EyeRoundRoastCarrots001_ADL, Hamburgers002_ADL.

20 37. Adlife has registered the following Copyrighted Food Photographs with the
21 United States Copyright Office under Registration Number VA0002045015;
22 BaconWrappedFillets001_ADL, BaconWrappedSteakCooked001_ADL.

23 38. Adlife has registered the following Copyrighted Food Photographs with the
24 United States Copyright Office under Registration Number VA0002046789;
25 PorkRibSpare010_ADL.

26 39. Adlife has registered the following Copyrighted Food Photographs with the
27 United States Copyright Office under Registration Number VA0002046799;
28 RoastBeefSandwich009_ADL.

40. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002046800; HamSpiral010_ADL.

41. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002046824; ChickenTender006_ADL.

42. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002046882; EggWhiteBowl001_ADL.

43. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002046891; ChickenBreastBnlsGrlMrk004_ADL.

44. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002046936; HotDogBuns001_ADL, MuffinsAssorted001_ADL.

45. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002047009; PizzaCheeseSteak001_ADL.

46. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002047015; BeefHamburger010_ADL.

47. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002047019; BeefRibEyeBnInGrlMrk001_ADL.

48. Adlife has registered the following Copyrighted Food Photographs with the United States Copyright Office under Registration Number VA0002055108; PorkTenderloin001_ADL, PorkTenderloin002_ADL, PorkTenderloin003_ADL.

1 49. Adlife has registered the following Copyrighted Food Photographs with the
2 United States Copyright Office under Registration Number VA0002055110;
3 BurgerPattiesCookedHC1010, WholeChickenPotatoes001_ADL.

4 50. Adlife has registered the following Copyrighted Food Photographs with the
5 United States Copyright Office under Registration Number VA0002055118;
6 SquashZucchini001_ADL.

7 51. On August 24, 2017, Adlife's Counsel informed Counsel for Peterson that
8 Defendants' use of Adlife's Copyrighted Food Photographs constituted infringement of
9 Adlife's copyrights.

10 52. Adlife has provided multiple notices to Defendants' Counsel that the
11 Copyrighted Food Photographs are subject to copyright and to cease use of the Copyrighted
12 Food Photographs.

13 53. Adlife did not consent or authorize, permit, allow in any manner the use of the
14 Copyrighted Food Photographs by Defendants.

15 54. Adlife is informed and believes that Defendants used Adlife's copyrighted
16 works without its permission and that it published, communicated, benefited through,
17 posted, publicized and otherwise held out to the public for commercial benefit, the original
18 and unique work of Adlife without Adlife's consent or authority, and acquired monetary
19 gain and market benefit as a result.

20 55. Adlife is informed and believes that Defendants used the Copyrighted Food
21 Photographs within its printed weekly circulars, which were also featured on its business
22 website, starting as late as March 1, 2017 to the present. *See Screenshots of Defendants'*
23 *Use of Copyrighted Food Photographs, attached hereto as "Exhibit B."*

24 56. Defendants used the Copyrighted Food Photographs to promote Defendants'
25 business.

26 57. Defendants continued use of Adlife's Copyrighted Food Photographs, and
27 ignoring Adlife's request to cease unauthorized use, constitutes willful infringement of
28 Adlife's copyrights.

58. Adlife did not consent to the use of its Copyrighted Food Photographs for commercial gain.

FIRST CLAIM FOR RELIEF

(Copyright Infringement, 17 U.S.C. § 501)

59. Adlife incorporates here by reference the allegations in paragraphs 1 through 59 above.

8 60. Adlife is the owner of all rights, title, and interest in the copyrights to the
9 Copyrighted Food Photographs, which substantially consist of material wholly original
10 with Adlife and which are copyright subject matter under the laws of the United States.
11 Adlife has complied in all respects with the Copyright Act and all the laws of the United
12 States governing copyrights.

13 61. Adlife's Copyrighted Food Photographs have been registered or are the
14 subject of copyright applications timely filed with the United States Copyright Office.

15 62. Defendants have directly, vicariously, contributorily and/or by inducement
16 willfully infringed Adlife's copyrights by reproducing, displaying, distributing, and
17 utilizing the Copyrighted Food Photographs for purposes of trade in violation of 17 U.S.C.
18 § 501 *et seq.*

19 63. Defendants have willfully infringed, and unless enjoined, will continue to
20 infringe Adlife's copyrights by knowingly reproducing, displaying, distributing, and
21 utilizing the Photo for purposes of trade. Indeed, Adlife previously placed Defendants on
22 notice about the illegal nature of their acts and said acts have continued unrestrained.

23 64. All the Defendants' acts are and were performed without Adlife's permission,
24 license, or consent.

25 65. Adlife has identified at least 97 instances of infringement on at least 58 images
26 by way of unlawful reproduction and display of Adlife's photographs. On information and
27 belief, Defendants have further infringed in materials not yet available to Adlife due to the
28 absence of discovery. If and when other infringements are determined and discovered in

1 this case, Adlife expressly reserves the right to amend the pleadings to include additional
2 acts of infringement as needed.

3 66. The said wrongful acts of Defendants have caused, and are causing, great
4 injury to Adlife, which damage cannot be accurately computed, and unless this Court
5 restrains Defendants from further commission of said acts, it will suffer irreparable injury,
6 for all of which it is without an adequate remedy at law. Accordingly, Adlife seeks a
7 declaration that Defendants are infringing its copyrights and an order under 17 U.S.C. §
8 502 enjoining Defendants from any further infringement of its copyrights.

9 67. As a result of the acts of Defendants alleged herein, Adlife has suffered and is
10 suffering substantial damage to its business in the form of diversion of trade, loss of profits,
11 injury to goodwill and reputation, and the dilution of the value of its rights, all of which are
12 not yet fully ascertainable. Further, the infringing conduct, accounting for each infringing
13 use, would entitle Adlife to a potential award up to \$150,000.00 in statutory and actual
14 damages for each of the infringed Copyrighted Food Photographs, in addition to its
15 attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Adlife requests judgment against Defendants as follows:

18 1. The Defendants, and their officers, agents, servants, employees, and
19 representatives, and all persons in active concert or participation with them, be permanently
20 enjoined from copying, reproducing, displaying, promoting, advertising, distributing, or
21 selling, or any other form of dealing or transaction in, any and all Copyrighted Food
22 Photographs of Adlife;

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COMPLAINT

1 2. The Court enter a seizure order directing the U.S. Marshal to seize and
2 impound all items possessed, owned or under the control of Defendants, their officers,
3 agents, servants, employees, representatives and attorneys, and all persons in active concert
4 or participation with them, which infringe upon Adlife's copyrights, including but not
5 limited to any and all broadcasting materials, advertising materials, print media, signs,
6 Internet web sites, domain names, computer hard drives, servers or any other media, either
7 now known or hereafter devised, bearing any design or mark which infringe, contributorily
8 infringe, or vicariously infringe upon Adlife's copyrights in the Copyrighted Food
9 Photographs as well as all business records related thereto, including, but not limited to,
10 lists of advertisers, clients, customers, viewers, distributors, invoices, catalogs, and the like;

11 3. An accounting be made for all profits, income, receipts or other benefit
12 derived by Defendants from the unlawful reproduction, copying, display, promotion,
13 distribution, or sale of products and services, or other media, either now known or hereafter
14 devised, that improperly or unlawfully infringes upon Adlife's copyrights pursuant to 17
15 U.S.C. §§ 504 (a)(1) & (b);

16 4. Actual damages and disgorgement of all profits derived by Defendants from
17 their acts of copyright infringement to reimburse Adlife for all damages suffered by it by
18 reasons of Defendants' acts, under 17 U.S.C. §§ 504 (a)(1);

19 5. Statutory damages for copyright infringement, including willful infringement,
20 in accordance with 17 U.S.C. §§ 504(a)(2) and (c);

21 6. Reasonable attorneys' fees incurred herein pursuant to 17 U.S.C. § 505 or
22 otherwise available by law;

23 7. Costs and interest pursuant to 17 U.S.C. §§ 504 (a)(1) and (b), 17 U.S.C. §
24 505, or otherwise available by law;

25 8. The Court declare that Defendants must return to Adlife all economic benefits
26 rightfully belonging to Adlife;

27 9. Awarding prejudgment interest to Adlife on all amounts owed; and
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10. Adlife be awarded any such other and further relief as the Court may deem just and appropriate.

Dated: January 8, 2018

Respectfully submitted,

/s/ Mathew K. Higbee
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DEMAND FOR JURY TRIAL

Adlife Marketing & Communications Co., Inc. hereby demands trial by jury of all issues so triable under the law.

Dated: January 8, 2018

Respectfully submitted,

/s/ Mathew K. Higbee
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